

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

June 29, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 652:14, a STATUTE related to the definition of "election officer," most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 652:14, a STATUTE related to the definition of "election officer," most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 289 (2003) amending RSA 652:14 is attached. (Exhibit 652:14 A)
- b) Chapter 436 (1979) enacting RSA 652:14 is attached (Exhibit 652:14 B)
- c) The changes made by amendments to RSA 652:14 are as follows:
 - 1. Chapter 289 (2003) amends this section by:

- a. Inserting the following phrases in the section:
 - i. “...*deputy moderator, assistant moderator, ...*”
 - ii. “...*deputy town clerk, city clerk, deputy city clerk, ward clerk, ...*”
 - iii. “...*registrar, or deputy registrar*”
- b. Removing the phrase “...*or inspector of election*” from the section

2. Chapter 436 (1979) enacts RSA 652:14

- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 289 (Exhibit 652:14 A). The bill was signed into law (by the Governor) on July 18, 2003, pursuant to New Hampshire Constitution Part Second, Article 44.

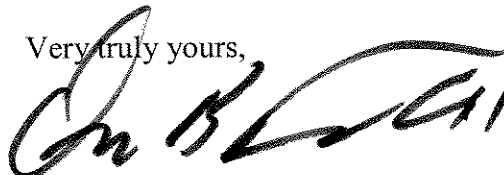
- i) Adoption dates:
 - 1. Chapter 289 (2003) adopted July 18, 2003
 - 2. Chapter 436 (1979) adopted June 25, 1979

- j) Effective dates:
 - 1. Chapter 289 (2003) effective September 1, 2003
 - 2. Chapter 436 (1979) effective July 1, 1979
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
 - 1. The purpose of the Chapter 289 (2003) change is to clarify and expand the list of persons included in the definition of “election officer” by adding *deputy moderator, assistant moderator, deputy town clerk, city clerk, deputy city clerk, ward clerk, registrar* and *assistant registrar* to the list, and by removing the “*inspector of election*” from the same definition. Deputies and assistants have historically been treated as election officers and this change was intended to make that status explicit. Inspectors of election are in most cases appointees of the political parties. They were removed from the definition as the Legislature felt only officials directly elected by the voters or who are directly appointed by elected officials should have the special status of “election officer.”
 - 2. The purpose of the Chapter 436 (1979) was to enact RSA 652:14. This was a recodification of the election laws.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) RSA 652:14 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 658:14 C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.

- r) Exhibit 652:14 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

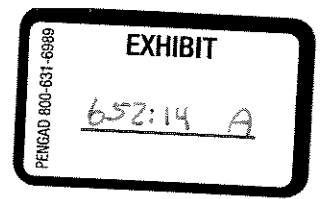
I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Orville B. Fitch II", written over the closing "yours,".

Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

83345.doc



CHAPTER 289

HB 627-FN - FINAL VERSION

25mar03... 0694h

25mar03... 0946h

05/22/03 1640s

24jun03... 2155CofC

30jun03... 2316eba

2003 SESSION

03-0294

03/10

HOUSE BILL **627-FN**

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

SPONSORS: Rep. Drisko, Hills 46; Rep. Lockwood, Merr 35; Rep. Naro, Graf 15; Rep. Whalley, Belk 31; Sen. Roberge, Dist 9

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
- II. Modifies procedures for voter registration and absentee voting.
- III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
- IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.

This bill is a request of committee established by 2002, 15.

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25mar03... 0694h

registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify, under the penalties ~~[of perjury]~~ *for voting fraud set forth below*, that I am a ~~[duly qualified]~~ voter in the town (city, village district, school district) of _____, New Hampshire, that I will be observing a religious commitment which prevents me from voting in person, or that on account of physical disability I am unable to vote in person; that I have carefully read the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the within ballot and sealed it in this envelope.

(Signature) _____

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

289:48 Election Officer. Amend RSA 652:14 to read as follows:

652:14 Election Officer. "Election officer" shall mean any moderator, *deputy moderator, assistant moderator*, town clerk, *deputy town clerk, city clerk, deputy city clerk, ward clerk*, selectman, supervisor of the checklist, *registrar, or deputy registrar* ~~[or inspector of election]~~.

289:49 Voting Rights of Overseas Citizens. Amend RSA 654:3 to read as follows:

654:3 Voting Rights of Overseas Citizens. Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled ~~[in Canada or Mexico or in any other country]~~ outside the ~~[continental]~~ United States, shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he *or she* had his *or her* domicile immediately prior to his *or her* departure from the United States, even though he *or she* no longer maintains domicile in said town or city and even though his *or her* intent to return thereto is uncertain, provided:

I. He *or she* complies with all other applicable requirements and qualifications of the state of New Hampshire; and

II. He *or she* is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and

III. He *or she* has a valid passport or card of identity issued under the authority of the Secretary of State of the United States.

289:50 General Voter Registration; Forms to be Forwarded. Amend RSA 654:9 to read as follows:

654:9 Forms to be Forwarded. The provisions of this section shall apply in all cities and in all towns. The town or city clerk shall present to the next meeting of the supervisors of the checklist the ~~[duplicate]~~ *voter* registration forms of all persons making application to ~~[him]~~ *the clerk* since the previous meeting of said supervisors.

289:51 General Voter Registration; Action by Supervisors. Amend RSA 654:13, I to read as follows:

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the ~~[duplicate]~~ registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, Vermont, Maine, Massachusetts, Connecticut, or Rhode Island, and send another copy to the clerk of their town or city.

289:52 Overseas Citizens Voting; Effect. Amend RSA 654:23 to read as follows:

652:7 Town Election. "Town election" shall mean an election to choose a town officer.

652:8 City Election. "City election" shall mean an election to choose a city officer.

652:9 School District Election. "School district election" shall mean an election to choose a school district officer.

652:10 Village District Election. "Village district election" shall mean an election to choose a village district officer.

652:11 Party. "Party" shall mean any political organization which at the preceding state general election received at least 3 percent of the total number of votes cast for the office of governor.

652:12 Vacancy. A "vacancy" shall occur in a public office if, subsequent to his election and prior to the completion of his term, the person elected to that office:

- I. Either dies, resigns or ceases to have domicile in the state or the district from which he was elected; or
- II. Is determined by a court having jurisdiction to be insane or mentally incompetent; or
- III. Is convicted of a crime which disqualifies him from holding office; or
- IV. Refuses to take the oath of office or to give or renew an official bond if required by law; or
- V. Has his election voided by court decision or ballot law commission decision.

652:13 Federal Election. "Federal election" shall mean any state general, special, or primary election held solely or in part for the purpose of choosing or nominating any candidates for the offices of president, vice-president, presidential elector, United States senator, or United States representative but shall not include any presidential primary election.

652:14 Election Officer. "Election officer" shall mean any moderator, town clerk, selectman, supervisor of the checklist or inspector of election.

652:15 Supervisors of the Checklist. The term "supervisors of the checklist" shall include any board of registrars or similar body performing the functions of registering voters and correcting the checklist in cities.

652:16 Town. The term "town" shall include wards in cities.

Time Computation

652:17 Uniform System. For the purposes of the election laws, a uniform system of computation of time shall be maintained.

652:18 Days Excluded. When a period or limit of time is to be reckoned from a day or date, that day or date and the day on which an act should occur shall be excluded from the computation of the period or limit of time.

652:19 Days Included. Whenever the election law refers to a period or limit of time, Saturdays, Sundays, and holidays shall be included, except as provided in RSA 652:18. However, when the last day for performing any act under the election laws is a Saturday, Sunday or official state holiday, the act required shall be deemed to be duly performed if it is performed on the following business day.

652:20 End of Day. Whenever the election laws require a filing with or an

action by an official, such filing or action shall be performed before 5 o'clock in the afternoon of the stipulated day.

Political Calendar

652:21 Authority; Format. Prior to the state primary election, the secretary of state with the advice and approval of the attorney general shall prepare a political calendar for state and town elections setting forth the dates when action required under the election laws must be taken. Any action taken by any candidate or official in connection with the election laws which shall be taken in accordance with the dates set forth in said calendar shall be deemed to be duly performed for the purposes of the election laws. The expense of printing said political calendar shall be a charge upon the appropriation for the office of the secretary of state.

Election Manual

652:22 Authority; Format; Distribution. The secretary of state, with the advice and approval of the attorney general, shall prepare or cause to be prepared by June first preceding each state general election an up-to-date manual on the New Hampshire election laws and procedures for conducting elections. The manual shall be written in non-technical language. The manual shall be distributed free of charge to each moderator, board of selectmen, city council, board of supervisors of the checklist and to each town, city and ward clerk. The secretary of state may distribute said manual to any other person who requests it.

CHAPTER 653

ELECTION OF OFFICERS AND DELEGATES

State and County Officers to be Elected

653:1 Elected for 2-Year Term. At every state general election, the following officers shall be elected for 2-year terms except as otherwise provided:

- I. The governor by the voters of the state;
- II. One executive councilor by the voters in each executive councilor district;
- III. One state senator by the voters in each senatorial district;
- IV. The number of state representatives to which a district is entitled by the voters in such state representative district;
- V. One sheriff, one county attorney, one county treasurer, one register of deeds, and one register of probate by the voters in each county;
- VI. County commissioners as follows:

(a) Coos, Carroll, Grafton, Merrimack, Hillsborough, and Rockingham counties - one county commissioner by those voters in each county commissioner district in each county;

(b) Belknap and Sullivan counties - one county commissioner county commissioner district by all the voters of each county;

(c) Strafford County - 3 county commissioners by all the county;

(d) Cheshire County - one county commissioner by the county commissioner district; provided that, at the 1980 state election, no commissioner from district 1 shall be elected, the commissioner from district 2 shall be elected to a 4-year term and the commissioner from district 3 shall be elected to a 2-year term. At each subsequent state general election, commissioners shall be chosen in the county by the inhabitants in which a commissioner's term is expiring; and, of the com-

EXHIBIT

652:14 JB

PENGAD 800-631-6989



U.S. Department of Justice

Civil Rights Division

EXHIBIT

PENGAD 800-631-6989

652:14 C

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

*Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

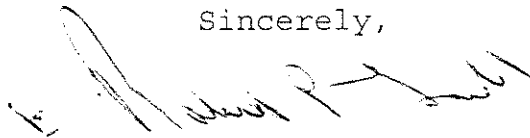
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

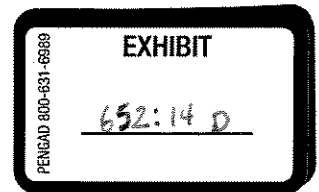
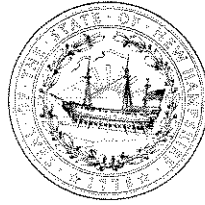
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Joseph D. Rich
Chief, Voting Section

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov